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27
28 **UNITED STATES BANKRUPTCY COURT**

1
2 **DISTRICT OF NEVADA**

3
4 In re
5
6 META MATERIALS, INC.,
7
8 Debtor.

9
10 Case No.: 24-50792-hlb
11 Chapter 7

12
13 **NON-PARTY CITADEL SECURITIES**
14 **LLC, ANSON FUNDS MANAGEMENT LP,**
15 **AND VIRTU FINANCIAL, LLC'S**
16 **MEMORANDUM OF LAW IN SUPPORT**
17 **OF MOTION TO QUASH AND/OR FOR A**
18 **PROTECTIVE ORDER**

19
20 **Hearing Date: TBD**
21 **Hearing Time: TBD**

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1 Non-Parties Citadel Securities LLC (“Citadel Securities”), Anson Funds Management LP
 2 (“Anson”), and Virtu Financial, LLC (“Virtu,” and collectively, the “Non-Parties”) respectfully
 3 move to quash and/or for a protective order (the “Motion”) as to the six operative¹ subpoenas served
 4 on them by Trustee Christine Lovato (the “Trustee”) of Meta Materials, Inc. (the “Debtor”): one
 5 subpoena each for a Rule 2004 Examination (“Rule 2004 Subpoenas”) and one subpoena each to
 6 Produce Documents, Information, and to Permit Inspection of Premises in a Bankruptcy Case (or
 7 Adversary Proceeding) (“Rule 45 Subpoenas,” and with the Rule 2004 Subpoenas, the
 8 “Subpoenas”). This Motion is supported by the following Memorandum of Points and Authorities
 9 and the exhibits attached thereto; the pleadings on file in the above-captioned case, which the Non-
 10 Parties respectfully request the Court to take judicial notice of under FED. R. EVID. 201; and the
 11 declarations of counsel filed contemporaneously herewith² pursuant to Local Rule 7037(a)
 12 discussing counsel’s good faith, yet unsuccessful, attempts to resolve this matter via multiple meet
 13 and confers with the Trustee regarding the Subpoenas.

14 **I. PRELIMINARY STATEMENT**

15 The Non-Parties respectfully move to quash and/or for a protective order as to each of the
 16 six Subpoenas served on them by the Trustee.

17 As an initial matter, the Rule 2004 Subpoenas should be quashed because they contain
 18 document requests not only in direct violation of Local Rule 2004(c) but also in violation of the
 19 Court’s own Orders in this case. Local Rule 2004(c) expressly provides that “[p]roduction of
 20 documents may not be obtained via an order under FED. R. BANKR. P. 2004.” Moreover, this Court,
 21 when granting the *ex parte* motions to issue Rule 2004 Subpoenas to Non-Parties Citadel Securities
 22 and Anson, declined to authorize the document requests proffered in the Trustee’s proposed orders.
 23 *Compare* ECF Nos. 1614 and 1616 *with* 1635 and 1686. In the case of Non-Party Virtu, the Trustee
 24 did not even include document requests in her proposed order, *see* ECF No. 1632, but nonetheless
 25

26
 27 ¹ The operative Rule 2004 Subpoenas and Rule 45 Subpoenas are attached hereto as Exhibits 1-2 (Citadel Securities),
 28 Exhibits 3-4 (Anson), and Exhibits 5-6 (Virtu). The Non-Parties refer to these subpoenas as “operative” in that the
 Trustee has served “replacement” (yet still improper) subpoenas to Anson and Virtu to fully replace her prior subpoenas.

2 ² Separately filed pursuant to Local Rule 9014(c)(2).

1 proceeded to improperly issue a Rule 2004 Subpoena that purported to request documents.

2 More fundamentally, the Trustee has not—and cannot—establish a permissible proper
 3 purpose (much less good cause) to justify the Rule 2004 Subpoenas. First, Rule 2004 permits
 4 examinations that “relate **only** to” the acts, conduct, or property or to the liabilities and financial
 5 condition of the debtor, or to any matter that may affect the administration of the debtor’s estate.
 6 The purpose of a Rule 2004 subpoena is to permit the court to gain a clear picture of the condition
 7 and whereabouts of the bankrupt’s estate. But the Trustee’s Subpoenas were issued for a wholly
 8 improper purpose: to advance what she admits is “pre-litigation discovery” for alleged market
 9 manipulation claims against already identified potential defendants as part of a plan to “provide
 10 recovery for the shareholders”—not the Debtor. FED. R. BANKR. P. 2004(b) (emphasis added); ECF
 11 No. 98-1 at 3. When asked directly during the meet and confer process, the Trustee’s counsel refused
 12 to answer questions about the Subpoenas, claiming the information was protected by purported
 13 litigation strategy and the work product doctrine. This striking response is dispositive, as it is a clear
 14 admission that the Subpoenas serve a litigation purpose outside the investigatory function of Rule
 15 2004. Second, courts have been clear that Rule 2004 may also not be used beyond the point where,
 16 as here, the Trustee already has sufficient information to file any complaint and consistently reject
 17 such misuse of Rule 2004: use of the Rule is “not permitted” where a party “has identified [the
 18 recipient] as a litigation target and is seeking to utilize the liberal discovery available under Rule
 19 2004 to further this ultimate litigation.” *In re Transmar Commodity Grp., Ltd.*, No. 16-13625-JLG
 20 (Bankr. S.D.N.Y.), June 9, 2017 Hr’g Tr. (ECF No. 367) (“Transmar Transcript”) at 22:7-11.

21 The Trustee’s failure to establish good cause for the Rule 2004 Subpoenas is further
 22 evidenced by her counsel’s inability to articulate any legitimate basis for the information sought.
 23 When questioned about fundamental aspects—such as the relevance of requested documents or
 24 justification for the four-year discovery period—counsel initially either refused to answer or
 25 admitted they “did not know,” and now refuses to answer on the basis that those questions intrude
 26 on “litigation strategy.” Compounding this impropriety, the Subpoenas would impose substantial
 27 burdens on the Non-Parties—financial institutions with no direct relationship to the Debtor—who
 28 are being asked to compile, review, and produce extensive trading records, proprietary business

1 information, and “all communications” about those records, spanning four years, all for improper
 2 purposes that go far beyond the permissible bounds of Rule 2004.

3 The Rule 45 Subpoenas are likewise improper for multiple independent reasons. As a
 4 threshold matter, the Trustee failed to comply with Local Rule 9016(b)’s requirement to file the Rule
 5 45 Subpoenas “concurrently with the[ir] issuance and service,” which is basis alone to quash these
 6 Subpoenas.

7 Beyond this procedural defect, the Rule 45 Subpoenas are also facially overbroad, unduly
 8 burdensome, and entirely disproportionate to any purported relevance. The Trustee’s sweeping
 9 requests for four years of trading records and “all communications” related to those records will not
 10 assist the Trustee in locating the Debtor’s assets or administering its estate, but will instead impose
 11 a significant undue burden on the Non-Parties. Critically, the Trustee has failed to articulate any
 12 legitimate connection between its requests and the Debtor’s current financial condition or the
 13 administration of the bankruptcy estate. The Non-Parties should not be forced to bear substantial
 14 expense and time responding to far-reaching demands so that the Trustee can trawl for documents
 15 supporting litigation against those very same Non-Parties for the benefit of shareholders rather than
 16 the estate.

17 This Court should reject the Trustee’s improper tactics and quash the Subpoenas in their
 18 entirety and/or issue a protective order shielding the Non-Parties from undertaking anything further
 19 with respect to the Subpoenas.

20 **II. JURISDICTION**

21 The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157(a) and 1334. Venue in
 22 this Court is proper under 28 U.S.C. § 1409. Pursuant to Local Rule 9014(b), the Non-Parties
 23 consent to the Court’s entry of final judgment if it is determined that the bankruptcy judge, absent
 24 consent of the parties, cannot enter final orders for judgment consistent with Article III of the United
 25 States Constitution.

26 **III. BACKGROUND**

27 **A. Meta Materials Files For Bankruptcy And Retains Special Litigation Counsel**

28 On August 9, 2024, the Debtor filed for Chapter 7 bankruptcy. ECF No. 1. Christina Lovato

1 was appointed Trustee on August 15, 2024. ECF No. 14. Within weeks, the Trustee began
 2 assembling a litigation team, ultimately retaining four separate law firms as “special counsel.” ECF
 3 Nos. 98, 105, 1956.

4 The scope and purpose of these engagements leave no doubt about special counsel’s end
 5 game here: the Trustee hired Christian Attar and Kasowitz Benson Torres LLP specifically to pursue
 6 litigation for alleged stock manipulation. According to the Trustee’s own filing, Christian Attar had
 7 already conducted a “preliminary investigation” before the bankruptcy that purportedly uncovered
 8 a fraud scheme involving “persistent and extensive spoofing” through “millions of ‘Baiting
 9 Orders.’” ECF No. 98 at 2, 98-1 at 2. The special counsel’s pre-petition investigation was
 10 purportedly comprehensive, allegedly identifying:

- 11 • “[O]ver 55 million shares of MMAT and 92 million shares of TRCH that were
 12 impacted by this fraudulent activity;”
- 13 • “[E]xtreme financial losses for more than 65,000 retail shareholders;”
- 14 • Specific trading practices constituting the alleged manipulation; and
- 15 • Market “manipulation that occurred persistently and over several years...”

16 ECF No. 98-1 at 2. The application also stated that special counsel had obtained approximately \$11
 17 million in litigation funding, including \$500,000 reallocated from an ongoing case litigated by the
 18 same special counsel who unsuccessfully sought similar third-party discovery from two of the Non-
 19 Parties in this matter. ECF No. 98-2 at 3-4. An investigation of this scale has provided the Trustee
 20 with more than enough information necessary to bring an adversary proceeding, if any—and is yet
 another reason these requests fall outside the purview of Rule 2004.

21 Moreover, the Trustee simultaneously hired Robison, Sharp, Sullivan & Brust to conduct
 22 Rule 2004 examinations and “eventual voidable transfer litigation.” ECF No. 105 at 1. Months
 23 later, the Trustee belatedly filed a motion to employ Schneider Wallace Cottrell Konecky LLP as
 24 special counsel to “join with Christian Attar and Kasowitz, Torres & Benson, to investigate potential
 25 claims and, if meritorious, pursue litigation related to suspected stock manipulation through illegal
 26 trading practices such as ‘naked short selling’ and ‘spoofing.’” ECF No. 1956 at 1.

27 **B. The Trustee’s Targets and Claims**

28 The Trustee’s filings reveal that, having conducted an investigation, she is now preparing for

1 litigation, not on behalf of the Debtor or its creditors, but rather, on behalf of shareholders against
 2 already-identified defendants. The summary of “potential litigation” attached to the Christian Attar
 3 retention application reads like a complaint, complete with:

- 4 • Identified defendants (“potential defendants” or “targets”);
- 5 • Specific wrongful conduct (“persistent and extensive spoofing”);
- 6 • A theory of liability (market manipulation through “Baiting Orders”);
- 7 • Damages calculations (“extreme financial losses”); and
- 8 • Non-Debtor plaintiffs (“more than 65,000 retail shareholders”).

9 ECF No. 98-1 at 2.

10 The Trustee has already launched a coordinated discovery campaign against a specific list of
 11 financial institutions and regulators. In addition to the Non-Parties, the Trustee has issued
 12 substantially similar subpoenas to Trust Clearing Co., FINRA, Nasdaq, Charles Schwab, TD
 13 Ameritrade, and TradeStation Securities.

14 On March 6, 2025, the Trustee also filed *ex parte* Motions for Rule 2004 Examinations as to
 15 each of the Non-Parties and in each case suggested that she was seeking an examination relating to
 16 the Debtor’s “assets, liabilities, and financial affairs” and how potential share price manipulation
 17 “affected Debtor’s financial condition for possible recovery on behalf of Debtor’s estate.” *See* ECF
 18 Nos. 1614, 1616, and 1632. The Court granted these *ex parte* motions, with orders limiting the
 19 requested discovery to examinations of the Non-Parties. *See* ECF Nos. 1635, 1641, and 1686.

20 **C. The Trustee’s Overbroad & Duplicative Subpoenas**

21 **1. Subpoenas to Non-Party Citadel Securities**

22 On March 18, 2025, the Trustee attempted to serve a Rule 2004 subpoena and a Rule 45
 23 subpoena on Citadel Securities via certified mail. Ex. 1 & Ex. 2. The Trustee’s transmittal letter
 24 acknowledged the subpoenas are duplicative, stating Citadel Securities could satisfy both by
 25 producing documents. *Id.*³ The subpoenas’ five document requests, however, are extraordinary in
 26 scope, seeking extensive communications, records, and data from September 21, 2020 through

27
 28 ³ While the Trustee failed to properly serve Citadel Securities, Citadel Securities agreed to accept service by email.

1 August 7, 2024. *Id.* For example, the subpoenas seek information related to *any* trades in “Meta
 2 and/or MMTLP,” records relating to Citadel Securities’ own positions in the same securities, as well
 3 as “all communications” related to trades of Meta securities made by Citadel Securities or its
 4 clients—over a nearly four-year period. *Id.*

5 Citadel Securities objected to these subpoenas in writing on June 13, 2025. Ex. 7. When
 6 Citadel Securities’ counsel asked during an initial meet and confer why this specific time period was
 7 chosen, the Trustee’s counsel admitted he “did not know” and that “the team looking into the matter
 8 for the Trustee had suggested that timeframe.” Ex. 8. More troubling still, when asked to explain
 9 why the Trustee needed this discovery from Citadel Securities specifically, counsel refused to
 10 answer, claiming the information was protected by “attorney-client privilege and our work product.”
 11 *Id.* On July 31, 2025, the Trustee’s counsel belatedly admitted that she was seeking “pre-litigation
 12 discovery” as part of an investigation of market manipulation including “spoofing and shorting by
 13 third parties such as Citadel [Securities].” *Id.* The Trustee’s counsel further stated that the Relevant
 14 Time Period was tied to the merger between Meta and Torchlight “and the subsequent period running
 15 through to the bankruptcy” without any explanation of why that “period” was relevant. *Id.*
 16 When Citadel Securities spoke with the Trustee during a subsequent meet and confer on August 1,
 17 2025, the Trustee again refused to explain the factual basis for the subpoenas to Citadel Securities,
 18 citing a need to protect “litigation strategy and work product.” During this meet and confer, the
 19 Trustee’s counsel also broadened, rather than narrowed, her requests. Counsel took the position that
 20 “messages” in requests seeking “All messages relating to” refers to “any form of communication.”
 21 *See* Ex. 8. Citadel Securities confirmed the parties were at an impasse on the requested discovery
 22 prior to service of this Motion. *See* Declaration of Peter H. Fountain; Ex. 8.

23 **2. Subpoenas to Non-Party Anson**

24 On March 20, 2025, the Trustee served Anson⁴ with the original subpoenas by certified mail.
 25 *See* Ex. 9. Anson timely responded and objected to these subpoenas on April 7, *see* Ex. 10, and the
 26 parties then engaged in several meet and confers and written exchanges regarding inquiries posed
 27

28 ⁴ Anson was misidentified as “Anson Funds USA” on the subpoenas that were served.

1 by Anson as to the bases for these subpoenas and the purported authorities supporting the Trustee's
 2 position. The Trustee provided limited authority in response, all of which was categorically
 3 distinguishable. The Trustee thereafter requested that Anson accept service through counsel of
 4 replacement subpoenas, namely one of the Rule 2004 Subpoenas and one of the Rule 45 Subpoenas,
 5 and Anson agreed to do so as a professional courtesy. Both of these replacement subpoenas still
 6 seek the production of broad categories of trade-related documents and records related to the non-
 7 debtor assets, such as all order routing and execution records related to "Meta"⁵ securities and
 8 Anson's alleged positions in the same. Ex. 3 & 4. *Id.* The Trustee set a date range of September
 9 21, 2020 through August 21, 2024 for records related to MMAT and TRCH and June 28, 2021 to
 10 December 14, 2022 for records related to MMTLP. *Id.* Anson objected in writing on July 11, 2025
 11 to these new replacement subpoenas. Ex. 11. Anson, too, conducted a final meet and confer on
 12 August 1, 2025—which was unsuccessful—prior to filing this Motion. *See* Declaration of Sylvia E.
 13 Simson ("Simson Decl.").

14 **3. Subpoenas to Non-Party Virtu**

15 On March 18, 2025, the Trustee served Virtu with the original subpoenas by certified mail.
 16 Virtu timely responded and objected to these subpoenas on April 29, 2025. Ex. 13. Virtu has
 17 similarly accepted service of replacement subpoenas and objected to them in writing on June 26,
 18 2025. Ex. 14; *see also* Ex. 5-6 (operative Virtu Subpoenas). The Trustee has requested production
 19 of documents from Virtu, which are akin to the replacement requests served on Anson. Ex. 5 & 6.
 20 As with Anson, the Trustee set a similar requested date range of September 21, 2020 through August
 21 7, 2024 for records related to MMAT and TRCH and June 28, 2021 to December 14, 2022 for records
 22 related to MMTLP. *Id.* Virtu, too, conducted a final meet and confer with the Trustee's counsel on
 23 July 25, 2025, which was unsuccessful. *See* Declaration of Barry Gold. Overall, these latest rounds
 24 of subpoenas seek production of extensive trading-related records over four years and information
 25 including third-parties (e.g., brokers, customers, and other market participants). *See* Exs. 3-6.

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28 ⁵ "Meta" was defined as four different CUSIPs or tickers, two styled as MMAT, one styled as TRCH, and one styled as MMTLP.

1 **IV. ARGUMENT**2 **A. Legal Standards**

3 Rule 2004 permits examination relating only to “the acts, conduct, or property or to the
 4 liabilities and financial condition of the debtor, or to any matter which may affect the administration
 5 of the debtor’s estate.” FED. R. BANKR. P. 2004(b). “[I]ts scope is not limitless.” *Snyder v. Soc'y
 6 Bank*, 181 B.R. 40, 41-42 (S.D. Tex. 1994) (finding the use of Rule 2004 to further another action
 7 “constitutes an abuse of Rule 2004”). An order granting a Rule 2004 examination “may be granted
 8 *ex parte*, but a party to be examined may oppose the examination by a motion to quash the
 9 subpoena.” *In re Dinubilo*, 177 B.R. 932, 943 (E.D. Cal. 1993). Once a motion to quash is filed,
 10 “the examiner bears the burden of proving that good cause exists for taking the requested discovery.”
 11 *Bank of Am., N.A. v. Landis*, 2011 WL 6104495, at *6 (D. Nev. Dec. 7, 2011) (reversing bankruptcy
 12 court’s denial of a motion to quash a Rule 2004 examination). Courts consider the “totality of the
 13 circumstances” in deciding whether good cause exists. *Id.* The burden of establishing good cause
 14 is particularly high when seeking discovery from non-parties to the bankruptcy proceeding. *In re
 15 Wilcher*, 56 B.R. 428, 434 (Bankr. N.D. Ill. 1985) (rejecting “wholesale investigation of a non-
 16 debtor’s private business affairs”).

17 Although document discovery may be sought under Local Rule 2004(c), Local Rule 9016,
 18 and FED. R. CIV. P. 45, the court “must” quash a subpoena that “subjects a person to undue burden.”
 19 Fed. R. Civ. P. 45(d)(3)(A)(iv). As explained in *In re Mod. Plastics Corp.*:

20 In deciding whether a subpoena imposes an undue burden upon a non-party, the
 21 courts undertake a case specific inquiry, considering such factors as relevance, the
 22 need of the party for the documents, the breadth of the document request, the time
 23 period covered by it, the particularity with which the documents are described and
 24 the burden imposed . . . The court must consider, and weigh, the need of [the
 25 subpoenaing party] for the discovery it seeks, against the burdens imposed on the
 26 Recipients.

27 2015 WL 13866302, at *6 (Bankr. W.D. Mich. July 23, 2015), *aff'd*, 577 B.R. 690 (W.D. Mich.
 28 2017) (internal quotation marks and citations omitted). Relevant here, “[t]he Federal Rules also
 afford nonparties special protection against the time and expense of complying with subpoenas.”
Exxon Shipping Co. v. U.S. Dep't of Interior, 34 F.3d 774, 779 (9th Cir. 1994) (citing Fed. R. Civ.

1 P. 45(c)(3)(A)(ii)); *see also In re Mod. Plastics*, 2015 WL 13866302, at *6 (noting “a particular
 2 solicitude for strangers to the litigation such as the [subpoena] Recipients” and “the status of a person
 3 as a non-party is a factor that weighs against disclosure”) (internal quotation marks and citation
 4 omitted).

5 **B. The Rule 2004 Subpoenas Should Be Quashed And/Or A Protective Order
 6 Issued Because They Far Exceed Rule 2004’s Limited Purpose**

7 Good cause for a Rule 2004 examination may exist when “the examination is *necessary* to
 8 establish the claim of the party seeking the examination, or if denial of such request would cause the
 9 examiner undue hardship or injustice.” *In re Dinubilo*, 177 B.R. at 943 (emphasis added); *In re
 10 Enron Corp.*, 281 B.R. 836, 840 (S.D.N.Y. 2002) (“Rule 2004 examinations are appropriate for
 11 revealing the nature and extent of the bankruptcy estate...”); *In re J&R Trucking, Inc.*, 431 B.R. 818,
 12 822 (Bankr. N.D. Ind. 2010) (noting “one purpose for such an examination is to give the trustee the
 13 information needed to determine *whether* litigation should be filed.”) (emphasis added). Good cause
 14 does not exist here.

15 The Trustee cannot meet the good cause standard for several reasons. As an initial matter, she has
 16 already “identified [the Non-Parties] as [] litigation target[s] and is seeking to utilize the liberal
 17 discovery available under Rule 2004 to further this ultimate litigation. That’s not permitted.” Ex.
 18 16, Transmar Transcript 22:7-11. The Rule 2004 Subpoenas also lack the requisite connection to
 19 the Debtor’s estate. *See infra*, Section IV.B(2). And, the Trustee cannot make a showing of
 20 necessity, let alone undue hardship or injustice when she already has, or will soon have, the
 21 information she seeks from other subpoena recipients. *See infra*, Section IV.C(3). Because the
 22 Trustee cannot carry her burden to establish good cause, the Rule 2004 Subpoenas should be quashed
 23 and/or a protective order issued with respect thereto.

24 **1. The Document Requests In The Rule 2004 Subpoenas Are Both
 25 Procedurally Improper And Unauthorized**

26 The Rule 2004 Subpoenas include document requests in clear contradiction to Local Rule
 27 2004(c), which states “[p]roduction of documents may not be obtained via an order under Fed. R.
 28 Bankr. P. 2004.” This defect alone is dispositive and requires that the document requests in the Rule

1 2004 Subpoenas be quashed. As this Court noted in *In re CWNevada LLC*, such requests “run afoul
 2 of Local Rule 2004(c)” and cannot be enforced. 602 B.R. 717, 721 n.3 (Bankr. D. Nev. 2019). The
 3 Local Rules provide no exceptions, and the Trustee’s failure to comply with this clear procedural
 4 requirement renders the Rule 2004 Subpoenas fatally defective.

5 More troubling is that the Trustee persisted with the document requests she included in her
 6 proposed orders accompanying the *ex parte* motions for Rule 2004 Examinations of Non-Parties
 7 Citadel Securities and Anson, despite this Court’s decision not to authorize them. *See* ECF Nos.
 8 1614, 1616. The Court’s orders granting the motions explicitly removed those document requests,
 9 thereby limiting its grant of the motions only to the request for an examination of each Non-Parties’
 10 custodian of records. *See* ECF No. 1635, 1686.⁶ Disregarding the Court’s orders, the Trustee still
 11 proceeded to include document requests in all of the Rule 2004 Subpoenas. Ex. 1, 3, 5.

12 Further, when the Trustee issued revised Rule 2004 Subpoenas to Non-Parties Anson and
 13 Virtu, not only did the Rule 2004 Subpoenas again include document requests, but the Trustee also
 14 disregarded the Local Rules and failed to seek approval from the Court for these new subpoenas and
 15 their new, expanded document requests. Local Rule 2004(a) requires “[a]ll requests” for orders
 16 under Rule 2004 to “be made by motion,” not merely initial requests. Consequently, the Trustee
 17 improperly proceeded without the necessary approval for her new subpoenas. When asked during
 18 meet and confers the basis on which she did so, the Trustee’s counsel said that they were not aware
 19 of this limitation in Local Rule 2004, but did not agree to withdraw the Rule 2004 Subpoenas. *See*,
 20 *e.g.*, Ex. 8.

21 The clear limitations of Local Rule 2004, and the Trustee’s disregard for the Court’s Orders,
 22 justify quashing the Rule 2004 Subpoenas in their entirety.

23
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 25
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27 ⁶ As for Virtu, the document requests in the Rule 2004 Subpoena exceed even the Trustee’s own proposed order. The
 28 amended *ex parte* motion for a Rule 2004 examination of Virtu’s custodian of records *removed* the document requests
 from the proposed order, *compare* ECF No. 1630 *with* No. 1632, and the Court’s order authorizing issuance of the
 subpoena did not add or otherwise authorize them, *see* ECF No. 1641.

2. The Rule 2004 Subpoenas Should Be Quashed Because They Lack Any Connection To The Debtor's Estate, Assets, Or Current Financial Condition

3 The Rule 2004 Subpoenas also fail because they lack any connection to the Debtor or its
4 estate. It is well-settled that, albeit potentially broad in scope, a Rule 2004 examination is to be used
5 solely for the legitimate purpose of obtaining information relating to “the financial affairs of the
6 debtor.” *In re Johns-Manville Corp.*, 42 B.R. 362, 365 (S.D.N.Y. 1984). Here, the Rule 2004
7 Subpoenas have no connection to “[t]he purpose of a Rule 2004 examination[, that] is[,] to allow the
8 court to gain a clear picture of the condition and whereabouts of the bankrupt’s estate,” *id.* at 364
9 (citing *Cameron v. United States*, 231 U.S. 710, 717 (1914)), and should therefore be quashed
10 because there is no “good cause” for these examinations.

11 On its face, Rule 2004 permits examination of matters relating *only* to: "(A) the debtor's acts,
12 conduct, or property; (B) the debtor's liabilities and financial condition; (C) any matter that may
13 affect the administration of the debtor's estate; or (D) the debtor's right to a discharge." FED. R.
14 BANKR. P. 2004(b).⁷ The Rule 2004 Subpoenas seek none of those matters. In contrast, they seek
15 information about, among other topics:

- The Non-Parties' trading and share-related activity, positions as to, and orders placed in Meta Materials and related entities;
- Internal business practices and procedures, compliance records, and other proprietary and sensitive business information;
- Other non-parties, such as customers and broker-dealers;
- Communications between non-Debtors; and
- Messages to third-party exchanges or other third parties sent on behalf of the Non-Parties.

23 None of this information relates to the Debtor's acts or conduct, property, liabilities, or

7 The Trustee's *ex parte* applications for Rule 2004 examination claimed to seek information related to the "assets,
26 liabilities, and financial affairs" of the Debtor. See ECF Nos. 1614, 1616, and 1632. To the extent the Trustee may
27 argue that her Subpoenas also seek information related to "the administration of the debtor's estate," such an argument
28 fails. The "administration of the estate" refers to administrative matters such as distributing the property of the estate,
In re Harper, 557 B.R. 171, 176 (Bankr. D. Ariz. 2016), and procedural concerns including the selection or removal of
a trustee, *In re Dinubilo*, 177 B.R. 932, 936 (E.D. Cal. 1993). This provision provides no basis to obtain the information
the Trustee seeks from the Non-Parties.

1 financial condition. At most, it relates to trades in the Debtor's publicly traded securities by third
 2 parties. But market trading by unrelated parties does not become the Debtor's "property" or
 3 "conduct" simply because the trades involved the Debtor's stock—this stock (bought and sold in
 4 secondary market transactions by third parties) is property of non-debtors, not property of the
 5 Debtor. Put differently, any claims of purported market manipulation belong to the shareholders,
 6 not the Debtor itself, and so could not possibly concern administration of the Debtor's estate because
 7 these claims belong to the shareholders and are not assets of the estate. *See In re J&R Trucking,*
 8 *Inc.*, 431 B.R. at 822-23 (denying Rule 2004 examination where it was employed as "a private
 9 collection device for creditors" rather than a tool "to efficiently administer bankruptcy estates."). In
 10 that vein, the Rule 2004 Subpoenas are similar to those recently rejected in *In re Vital Pharms., Inc.*,
 11 where the bankruptcy court denied Rule 2004 discovery because it was predicated on "[s]peculative
 12 or inflammatory claims – unsupported by any facts" and to fish for information to "assert potential
 13 personal litigation claims rather than a genuine concern for the administration of the estate." 2025
 14 WL 1189882, at *4 (Bankr. S.D. Fla. Apr. 23, 2025).

15 Further, when asked for legal authority supporting its Rule 2004 Subpoenas, the Trustee cited
 16 a facially distinguishable order from *In re Sorrento Therapeutics, Inc.*, No. 23-90085 (Bankr. S.D.
 17 Tex. Apr. 4, 2023), ECF No. 334. *See, e.g.*, Ex. 8. In *Sorrento*, Judge David R. Jones granted an
 18 unopposed motion seeking narrow Rule 2004 discovery needed to identify beneficial owners of
 19 shares in a company in which the Debtor itself held a majority equity interest. *Id.* The information
 20 was required for a specific administrative purpose—to ensure proper delivery of proxy materials for
 21 an imminent shareholder meeting that directly affected the Debtor's ability to govern and protect its
 22 largest asset. *Sorrento*, ECF No. 330 ¶ 13. Unlike in *Sorrento*, where the Debtor sought information
 23 to protect an existing asset, the Trustee here seeks to construct speculative "pre-litigation" claims
 24 against already-identified targets, related to non-debtor assets, a purpose that falls squarely outside
 25 Rule 2004's limited scope. Moreover, the limited, administrative discovery sought in *Sorrento* bears
 26 no resemblance to the Trustee's sweeping demands for four years of proprietary trading data, internal
 27 communications, and confidential business information from the Non-Parties with no direct
 28

1 relationship to the Debtor. The other authorities cited by the Trustee in communicating with the
 2 Non-Parties are equally inapposite.

3 The requests for the Non-Parties' proprietary position data (Citadel Securities Request 5,
 4 Anson Request 3, Virtu Request 5) are particularly problematic. How Citadel Securities, Anson,
 5 and Virtu managed their trading books or business activities has zero bearing on the Debtor's assets
 6 or the administration of the estate. This is exactly the type of "wholesale investigation of a non-
 7 debtor's private business affairs" that Rule 2004 prohibits. *In re Wilcher*, 56 B.R. at 434. The other
 8 Requests similarly seek information about the Non-Parties' clients' trading data and practices, as
 9 well as proprietary business information concerning how the Non-Parties handle the trading orders
 10 they receive from non-debtors. *See e.g.*, Ex. 1 & 2. As noted above, "examination ... as to matters
 11 having no relationship to the debtor's affairs or no effect on the administration of [its] estate is
 12 improper." *In re Wilcher*, 56 B.R. at 433 (citation omitted). These improper requests warrant
 13 quashing the Rule 2004 Subpoenas and/or issuing a protective order as to them.

14 **3. The Trustee's Conduct Confirms She Has Already Identified The Non-
 15 Parties As Litigation Targets, Further Highlighting The Impropriety Of
 The Rule 2004 Subpoenas**

16 As courts consistently recognize, Rule 2004 discovery must be "proper," and Rule 2004
 17 cannot be used as an end-run around those rules that would govern civil litigation in federal or state
 18 court once a litigation target has been identified. *In re GHR Energy Corp.*, 35 B.R. 534, 538 (Bankr.
 19 D. Mass. 1983) (declining to permit Rule 2004 examination, *see infra* at 14-15); *see also e.g.*, *In re*
 20 *Defoor Ctr., LLC*, 634 B.R. 630, 632 (Bankr. M.D. Fla. 2021) (denying a Rule 2004 examination
 21 because "[a] Rule 2004 examination is meant to provide the Debtor with the preliminary information
 22 needed to file a complaint. Here, the Debtor already has that information."). To find that the Rule
 23 2004 Subpoenas exceed Rule 2004's limited scope, this Court need look no further than the Trustee's
 24 own admissions. During an initial meet and confer with Citadel Securities, the Trustee was asked
 25 basic questions about the Subpoenas—including why the Trustee was requesting this information
 26 from Citadel Securities—and the Trustee's counsel refused to answer. His stated reason for his
 27 refusal speaks volumes: the information was protected by "*attorney-client privilege and our work*
 28 *product.*" Ex. 8 (emphasis added). Similar representations of attorney-client privilege and work

1 product protections were made to the other Non-Parties, first during a telephonic meet and confer
 2 with Anson on June 10, 2025. During subsequent meet and confers with Non-Parties, the Trustee
 3 again refused to answer questions about the Subpoenas on the basis they intruded on “litigation
 4 strategy” and were work product protected.

5 These admissions end the inquiry. The work product doctrine protects only materials
 6 prepared “in anticipation of litigation.” FED. R. CIV. P. 26(b)(3)(A); *In re Datacom Sys., Inc.*, 2014
 7 WL 10077651, at *5 (Bankr. D. Nev. July 25, 2014). By invoking this protection to shield her
 8 reasons for seeking discovery, in addition to admitting the need to protect her “litigation strategy,”
 9 the Trustee has necessarily admitted again that the Subpoenas were issued “in anticipation of
 10 litigation” and she is seeking information for use in litigation, not for the limited purposes authorized
 11 by Rule 2004. The Trustee’s choice to invoke this doctrine is a judicial admission that forecloses
 12 any argument that the Subpoenas serve a legitimate Rule 2004 purpose.

13 Moreover, the Trustee crossed this line into pre-litigation, and beyond the boundaries of Rule
 14 2004, long ago. Before the bankruptcy case was even filed, the Debtor’s advisors had completed
 15 their investigation and reached their conclusions. They claim to have:

- 16 • Analyzed trading in over 147 million shares;
- 17 • Identified specific unlawful trading practices;
- 18 • Quantified the impact on shareholders; and
- 19 • Determined the temporal scope of the alleged manipulation.

20 ECF No. 98-1 at 2. The Rule 2004 Subpoenas are thus not preliminary fact-gathering—they are
 21 post-investigation litigation preparation by a Trustee armed with the information she already
 22 believes supports an adversary proceeding. The court’s ruling in *In re GHR Energy* is instructive in
 23 this regard: “From the evidence presented to me, it seems that the debtors are now in a position to
 24 file an action against certain of the individuals and entities if they so choose. It appears the debtors
 25 are attempting to use Rule 2004 to circumvent the procedural safeguards provided a litigant by the
 26 Federal Rules of Civil Procedure.” 35 B.R. at 538. This Court should not countenance such tactics.

27 Lest there be any doubt, the Trustee’s engagement letters with special counsel confirm that
 28 litigation decisions have already been made and approximately \$11 million in litigation funding has

1 been obtained, including \$500,000 from a case in which special counsel unsuccessfully sought
 2 similar discovery from two of the instant Non-Parties regarding alleged market manipulation on the
 3 part of those Non-Parties. ECF No. 98 at 2, 98-2 at 3-4. Christian Attar was hired specifically to
 4 pursue claims for “illegal trading practices known as ‘naked short selling’ or ‘spoofing.’” ECF No.
 5 98 at 1. Kasowitz Benson was brought in as litigation co-counsel. *Id.* And then the Trustee retained
 6 both Robinson, Sharp, Sullivan & Brust and Schneider Wallace Cottrell Konecky as litigation co-
 7 counsel. ECF Nos. 105, 1956. The Trustee does not need four law firms to conduct an investigation;
 8 these are not investigatory retentions, but rather, are litigation retentions. In fact, the Trustee sent
 9 Non-Party Virtu a draft Protective Order that discussed “litigation,” “pretrial discovery,” and even
 10 “Virtu’s claims or defenses.” Ex. 15 (proposed protective order). In discussions with the Non-
 11 Parties, the Trustee also confirmed that its Subpoenas sought “pre-litigation discovery” concerning
 12 “whether Meta’s stock was manipulated”—the same “potential litigation” the Trustee described to
 13 the Court, ECF No. 98-1. *See, e.g.*, Ex. 8.

14 Courts have consistently rejected this misuse of Rule 2004 subpoenas. For example, as noted
 15 above, in *In re Transmar*, the court denied a Rule 2004 application where the subpoena recipient
 16 was identified “as a litigation target” and the Rule 2004 subpoena was being sought to further that
 17 litigation, because that is an impermissible use of a Rule 2004 subpoena. Transmar Transcript at
 18 22:7-11, Ex. 16. In *In re Interpictures, Inc.*, the court rejected a Rule 2004 examination where “it is
 19 apparent from the application that Mr. Miller seeks the examination not so much to discover the
 20 existence of assets on behalf of the debtor, but rather for the purpose of discovery in a pending or
 21 proposed proceeding,” as that is “beyond the scope of Bankruptcy Rule 2004 and must be [] pursuant
 22 to proper discovery.” 86 B.R. 24, 29 (Bankr. E.D.N.Y. 1988). And in *In re Waddell*, Rule 2004
 23 discovery was rejected where it was suggested that the information sought “might be useful in other
 24 litigation—a purpose for which Rule 2004 examinations are not available.” 2025 WL 957733, at *7
 25 (Bankr. S.D.N.Y. Mar. 28, 2025) (citing *In re Enron*, 281 B.R. at 842)).

26 The same is true here. The Trustee has completed her investigation at least in significant
 27 part, identified certain entities of interest, and is now seeking to use Rule 2004 to build her litigation
 28 case. The Trustee’s message to the Non-Parties has been consistent and clear over the last few

1 months of meet and confer exchanges and related communications: these Subpoenas are an attempt
 2 to gain a strategic advantage in imminent litigation. Necessarily, the Trustee is attempting an
 3 improper end-run around the Federal Rules of Civil Procedure that should be rejected by this Court.
 4 *See In re Defoor Ctr.*, 634 B.R. at 639 (denying Rule 2004 examination where it “would give the
 5 Debtor an unfair strategic advantage.”); *In re Enron*, 281 B.R. at 841 (explaining how “courts have
 6 expressed concern that Rule 2004 examinations not be used as a tactic to circumvent the safeguards
 7 of the Federal Rules of Civil Procedure” and collecting cases). This issue also underscores the
 8 Trustee’s inability to establish “good cause” for the Rule 2004 Subpoenas. *In re J&R Trucking, Inc.*,
 9 431 B.R. at 822 (noting “one purpose for such an examination is to give the trustee the information
 10 needed to determine *whether* litigation should be filed.”) (emphasis added). The Rule 2004
 11 Subpoenas should accordingly be quashed and/or a protective order issued.

12 **C. The Rule 45 Subpoenas Should Be Quashed Because They Are Overbroad,
 13 Irrelevant, And Unduly Burdensome**

14 **1. The Requests In The Rule 45 Subpoenas Are Facially Overbroad**

15 The Rule 45 Subpoenas should be quashed because they are grossly overbroad and wildly
 16 disproportionate to the alleged needs of the Debtor. The requests seek voluminous trading records
 17 and associated documents in sweeping categories over a four-year period.

18 Consider Request 1 to Citadel Securities, which demands “[a]ll messages relating to the
 19 routing of orders of any type” for Meta Materials shares. Moreover, during a recent meet and confer,
 20 the Trustee confirmed that each of its request for “messages” should be to read to mean “any form
 21 of communication” This would encompass every single communication related to every single order
 22 for Meta Materials shares—buy, sell, market, limit—over a four-year period regardless of whether
 23 that order had any connection to the alleged manipulation the Trustee claims to be investigating.
 24 Similar requests abound in the Rule 45 Subpoenas to Anson and Virtu. Courts routinely quash
 25 subpoenas with this type of “any and all” language as facially overbroad. *Guillen v. B.J.C.R. LLC*,
 26 341 F.R.D. 61, 71 (D. Nev. 2022) (finding requests for “any and all” documents overbroad without
 27 temporal or other reasonable limitation).

1 The requests also expand beyond the Non-Parties' own activities, seeking information about
 2 trades by "client broker-dealers of Citadel [Securities]" and "customer info" and "broker info"
 3 relating to Anson and Virtu's trading activities. This is information to which the Non-Parties may
 4 not even have access, let alone the right to produce. Multiple requests also seek documents or
 5 communications exchanged with clients or other third parties over a four-year period, demanding
 6 production of documents outside the Non-Parties' possession, custody, or control.⁸ The
 7 "unreasonably wide breadth of the [Trustee's] document subpoenas"—combined with the Trustee's
 8 counsel's refusal to provide any information during meet and confers about the relevance or
 9 necessity of the information sought—weighs heavily in favor of quashing here. *In re Morreale*
 10 *Hotels LLC*, 517 B.R. 184, 198 (Bankr. C.D. Cal. 2014).

11 **2. The Trustee's Failure To Articulate Her Discovery Need Is Dispositive**

12 "[T]he need of the party for the documents" is a factor considered when evaluating whether
 13 a subpoena imposes an undue burden, which is to be weighed against "the burdens imposed on the
 14 [Non-Parties]." *In re Modern Plastics Corp.*, 2015 WL 13866302, at *6-7 (finding a "half-hearted
 15 explanation" as to relevance unpersuasive). Here, the Trustee's inability to explain the basis for her
 16 discovery requests is yet another basis under which they should clearly be quashed. For example,
 17 during the initial meet and confer with Citadel Securities, when asked basic questions about the
 18 Subpoenas, the Trustee's counsel could not or would not provide answers:

- 19 • Why the specific four-year time period? Counsel "did not know."
- 20 • Why does the Trustee need discovery from Citadel Securities? Counsel claimed this
 was protected by "attorney-client privilege and our work product."
- 21 • What is the relevance of the requested documents? No explanation provided beyond
 stating "every party will have different data and documents."

22 Ex. 8. Similarly ambiguous (at best) responses were provided to Anson and Virtu. For example,
 23 when Anson asked the Trustee to support the scope and relevancy of her requests with legal
 24 authority, the Trustee was also unable to articulate a meaningful rationale. *See* Ex. 12.

25
 26
 27 ⁸ *See Sci. Games Corp. v. AGS LLC*, 2017 WL 3013251, at *2 (D. Nev. July 13, 2017) (noting a "party is entitled to seek
 28 only those documents in the subpoenaed person's 'possession, custody, or control.'") (quoting Fed. R. Civ. P.
 45(a)(1)(A)(iii)).

1 As a matter of black-letter law, the Trustee “may not simply argue in conclusory fashion that
 2 all of the discovery [s]he seeks is relevant.” *Heilman v. Chernis*, 2012 WL 5187732, at *4 (E.D.
 3 Cal. Oct. 18, 2012) (internal quotation marks and citation omitted). The Trustee must articulate and
 4 be “able to explain the ways in which the underlying information bears on the issues as that party
 5 understands them.” FED. R. CIV. P. 26(b), advisory committee’s notes to 2015 amendment. The
 6 Trustee’s vague assertion that “every party will have different data” is precisely the type of blanket
 7 speculation that courts consistently reject.

8 The Trustee’s later attempts to explain relevance fare no better. In a July 31, 2025 email, the
 9 Trustee’s counsel admitted that she was seeking “pre-litigation discovery” against an identified
 10 potential defendant, Citadel Securities, because, according to the Trustee, “Meta’s stock price
 11 plummeted over time, which may be due in part to spoofing and shorting by third parties such as
 12 Citadel, which is what the Trustee is investigating.” Ex. 8. Instead of articulating a legitimate
 13 connection to the Debtor’s estate, the Trustee went on to cite to inapposite caselaw and merely insist
 14 that Rule 2004 (tellingly not Rule 45) discovery is a permissible “fishing expedition,” further
 15 confirming the improper purpose of the Subpoenas. Similar statements of purported relevance and
 16 reliance on distinguishable case law were made during meet and confers with the other Non-Parties.

17 **3. The Subpoenas Impose An Extraordinary And Disproportionate
 18 Burden On Non-Parties**

19 First, the cost and burden to the Non-Parties would be substantial. Compliance with the
 20 Subpoenas will require the Non-Parties to search for, review, and produce potentially millions of
 21 documents spanning nearly four years. Confirming the broad scope of the requested documents, in
 22 meet and confer discussions, the Trustee’s counsel explained that the “messages” in the request for
 23 “[a]ll messages relating to” the data referred not only to trading data, but to “any form of
 24 communications.” Ex. 8. Review of the requested data will be complex and time-consuming given
 25 the volume of data requested and the need to review for third-party confidentiality, privileged
 26 information, and proprietary business information. Producing FIX protocol messages and similar
 27 trading data, as requested by the Trustee here, is extraordinarily complex and resource-intensive.
 28 FIX messages utilize a standardized electronic format comprising hundreds of predefined fields,

1 requiring specialized expertise and software to accurately extract, interpret, and process. For the
 2 four-year period requested, this would involve extensive technical resources to compile, review, and
 3 validate the messages. On top of that, the collection and review of email and other documents
 4 encompassed by “all communications” would impose an even greater burden on the Non-Parties.
 5 All told, this process would require the costly diversion of significant resources from existing
 6 business priorities. This extraordinary burden far exceeds what is appropriate for a non-party,
 7 especially when weighed against the Trustee’s inability to articulate any legitimate need for the
 8 information. *See* Fed. R. Civ. P. 26(b)(1) (made applicable by FED. R. BANKR. P. 7026).

9 Second, the Trustee has already obtained or will obtain much of this information from other
 10 sources. The Trustee here has issued similar subpoenas to FINRA (seeking broker-level trading
 11 data), Nasdaq (seeking all order messages), and numerous other financial institutions. *See, e.g.*, ECF
 12 No. 1621, 1623. Moreover, recent filings indicate that the Trustee will receive data from exchanges,
 13 which function more like centralized repositories for the data the Trustee is requesting. *See, e.g.*,
 14 ECF No. 1955 (stipulated protective order between the Trustee and Nasdaq). Any relevant
 15 information (to the extent there is any) would be captured in these other productions, making the
 16 Non-Parties’ production cumulative and duplicative. Indeed, the Trustee, even before issuing these
 17 Subpoenas, has already identified “55 million shares of MMAT and 92 million shares of TRCH”
 18 she claims were impacted by certain trading activity, ECF No. 98-1 at 2, indicating she already
 19 possesses substantial information concerning relevant trades even without the ongoing productions
 20 from other entities such as Nasdaq. *See Trevino v. Burke*, 2024 WL 2853262, at *1 (E.D. Cal. June
 21 5, 2024) (explaining “a Rule 45 subpoena should be directed to non-parties for information that
 22 cannot be readily obtained from a party to the case.”). Trustee’s counsel’s claim during meet and
 23 confer discussions that there is no basis to believe this information may be obtained from other
 24 sources is entirely unsupported, providing yet another basis to quash the Subpoenas. *Roosevelt*
 25 *Irrigation Dist. v. Salt River Project Agric. Improvement*, 2016 WL 159842, at *3 (D. Ariz. Jan. 14,
 26 2016) (“If the party seeking … the information can easily obtain the same information without
 27 burdening the nonparty, the court will quash the subpoena.” (quotation omitted)).

28 Courts routinely quash non-party subpoenas that are far less burdensome and far more

1 proportionate than those here. *See Convolve, Inc. v. Dell, Inc.*, 2011 WL 1766486, at *2 (N.D. Cal.
 2 May 9, 2011) (quashing subpoena where party “ha[d] not drawn their request narrowly enough”);
 3 *Brown v. Rasley*, 2017 WL 6451706, at *4 (E.D. Cal. Dec. 18, 2017) (denying subpoena where
 4 records obtainable by document request and not clear plaintiff exhausted other “reasonably available
 5 means”). The Rule 45 Subpoenas here should be similarly quashed too.⁹

6 **V. CONCLUSION**

7 The Non-Parties respectfully request that the Court quash the Subpoenas in their entirety and/or
 8 enter a Protective Order prohibiting the Trustee from seeking the same or similar discovery from the
 9 Non-Parties.

10 Dated this 5th day of August, 2025.

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 28 ⁹ The replacement Rule 45 Subpoenas are also procedurally improper because they fail to comply with Local Rule
 29 9016. Local Rule 9016 provides the “attorney for the party serving the subpoena duces tecum must file a notice of the
 30 subpoena duces tecum on the docket of the case concurrently with the issuance and service of the subpoena.” The
 31 Trustee failed to file any notice on the docket regarding the new Rule 45 Subpoenas issued to both Anson and Virtu.
 32 This procedural impropriety also warrants quashing.

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